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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LEE WOMACK,

Defendant and Appellant.

C063523

(Super. Ct. No. CM030299)

On November 21, 2008, pursuant to a search warrant, officers searched defendant Robert Lee Womack's home. During the search, officers found 80 methadone pills, syringes containing heroin, two bottles of heroin-soaked cotton balls and approximately \$850. Defendant was charged with possession of heroin, possession of methadone, possession of heroin for sale, unauthorized possession of a hypodermic needle or syringe and possession of an opium pipe. Pursuant to a negotiated plea, defendant pled no contest to possession of heroin for sale and the remaining counts were dismissed with a *Harvey* waiver.¹ The

¹ *People v. Harvey* (1979) 25 Cal.3d 754.

court found this constituted an unusual case and granted defendant probation. The court sentenced defendant to the upper term of four years, imposed a restitution fund fine of \$200, as well as additional fees and fines, and execution of that sentence was stayed.

A probation violation petition was filed on August 18, 2009, alleging defendant had violated probation by being in possession of a controlled substance. Officer Bauer of the City of Chico Police Department conducted a probation search of defendant. He found what he believed to be heroin in defendant's right watch pocket. He removed it from defendant's pocket, placed it on the rear of his patrol car and continued searching defendant. Defendant leaned down, picked the heroin up with his mouth and swallowed it. Following a hearing, the court found defendant had violated probation. The court revoked probation and ordered the previously imposed sentence executed. Defendant was awarded 143 days of actual credit and 70 days of conduct credit under Penal Code section 4019, for a total of 213 days of credit.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to his pending appeal and entitle him to additional presentence credits. We conclude that the amendments do apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant is not final"]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to amendment allowing award of custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying *Estrada* to amendment involving conduct credits].) Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b), (c); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Consequently, defendant having served 143 days of presentence custody, is entitled to 142 days of conduct credit, for a total of 285 days of presentence credit.

While this appeal was pending, the Legislature again amended section 4019, but expressly stated the changes to jail inmate credits apply only to crimes committed on or after the effective date of the legislation, September 28, 2010. (Stats. 2009-2010, ch. 426, § 2 [Sen. Bill No. 76].)

Having undertaken an examination of the entire record, we find no other arguable error in favor of defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment, reflecting the additional custody credits, and to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

SIMS, J.

We concur:

SCOTLAND, Acting P. J.*

HULL, J.

* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.